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8 Attorneys for Plaintiff
9 COASTAL ENVIRONMENTAL RIGHTS FOUNDATION

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 COASTAL ENVIRONMENTAL RIGHTS
13 FOUNDATION,
14 a non-profit corporation,

15 Plaintiff,

16 v.

17 RILEY RECYCLING, Inc. a corporation; PAUL
18 H. SWEENEY, SR, an individual; SUSAN E.
19 SWEENEY, an individual.

20 Defendants.

Case No. 3:15-cv-00954-AJB-DHB

[Proposed]
CONSENT DECREE

(Federal Water Pollution Control Act,
33 U.S.C. § 1251 *et seq.*)

21 WHEREAS, Coastal Environmental Rights Foundation ("CERF" or "Plaintiff") is a non-profit
22 organization founded by surfers in North San Diego County and active throughout California's coastal
23 communities;

24 WHEREAS, Plaintiff CERF was established to aggressively advocate, including through
25 litigation, for the protection and enhancement of coastal natural resources and the quality of life for
26 coastal residents, and one of CERF's primary areas of advocacy is water quality protection and
27 enhancement;

28 WHEREAS, Defendant Riley Recycling, Inc. ("Riley") is an Owner and/or Operator of the
scrap metal recycling facility located at 15 28th Street, San Diego, California ("Riley Facility");

1 **WHEREAS**, Defendants Paul H. Sweeney, Sr. and Susan E. Sweeney (collectively “Sweeney
2 Defendants”) are current owners of the property located at 15 28th Street, San Diego, CA and 2812
3 Commercial Street, San Diego, CA (“Property”);

4 **WHEREAS**, Riley operates the Riley Facility on a portion of the Property owned by Defendants
5 Paul H. Sweeney and Susan E. Sweeney;

6 **WHEREAS**, CERF contends that the Riley Facility operations result in discharges of pollutants
7 to storm drains, San Diego Bay and ultimately the Pacific Ocean (collectively referred to as the
8 “Receiving Waters”) and the Riley Facility’s discharges are regulated by the Federal Water Pollution
9 Control Act, 33 U.S.C. § 1251 et seq. (“CWA” or “Act”), Sections 301(a) and 402, 33 U.S.C §§
10 1311(a), 1342;

11 **WHEREAS**, on December 11, 2014, CERF served Riley, Sweeney Defendants (collectively
12 “Defendants”), the United States Environmental Protection Agency (“EPA”), EPA Region IX, the State
13 Water Resources Control Board (“State Board”) and the Regional Water Quality Control Board
14 (“Regional Board”), with a notice of intent to file suit (“60-Day Notice”) under Sections 505(a) and (b)
15 of the CWA, 33 U.S.C. § 1365(a) and (b). The 60-Day Notice alleged that the recipients had in the past
16 and in fact continue to violate Sections 301(a) and 402 of the Act, 33 U.S.C. §§ 1311(a) and 1342, by
17 discharging pollutants into Receiving Waters in violation of National Pollution Discharge Elimination
18 System (“NPDES”) General Permit No. CAS0000001 [State Board] Water Quality Order No. 92-12-
19 DWQ, as amended by Order No. 97-03-DWQ (“Industrial Permit”) and the Act;

20 **WHEREAS**, on April 29, 2015, CERF filed a complaint against Defendants entitled Coastal
21 Environmental Rights Foundation v. Riley Recycling, Inc. et al, (“Complaint”);

22 **WHEREAS**, CERF and Defendants (collectively “Parties”) have agreed that it is in the Parties’
23 mutual interest to enter into a Consent Decree setting forth terms and conditions appropriate to resolving
24 the allegations set forth in the Complaint without further proceedings;

25 **WHEREAS**, this Consent Decree shall be submitted to the United States Department of Justice
26 and the United States Environmental Protection Agency for the statutory review period pursuant to 33
27 U.S.C. § 1365(c) and 40 C.F.R. § 135.5;

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1 **WHEREAS**, all actions taken by Defendants pursuant to this Consent Decree shall be made in
2 compliance with all applicable federal, state and local rules and regulations;

3 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE PARTIES AND**
4 **ORDERED AND DECREED BY THE COURT AS FOLLOWS:**

5 1. The Court has jurisdiction over the subject matter of this action pursuant to Section
6 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A);

7 2. Venue is appropriate in the Southern District Court pursuant to Section 505(c)(1) of the
8 Act, 33 U.S.C. §1365(c)(1), because the Riley Facility at which the alleged violations took place is
9 located within this District;

10 3. The Complaint states a claim upon which relief may be granted against Defendants
11 pursuant to Section 505 of the Act, 33 U.S.C. § 1365;

12 4. CERF has standing to bring this action.

13 **I. OBJECTIVES**

14 5. It is the express purpose of the Parties entering into this Consent Decree to further the
15 objectives set forth in Section 101 *et seq.* of the CWA, 33 U.S.C. § 1251 *et seq.*, and to resolve those
16 issues alleged by CERF in its Complaint. In light of these objectives and as set forth fully below,
17 Defendants agree, *inter alia*, to comply with the provisions of this Consent Decree. Riley agrees to
18 comply with the requirements of the Industrial Permit and all applicable provisions of the CWA at the
19 Riley Facility. Specifically, Receiving Water Limitation C(2) in the Industrial Permit requires that the
20 Riley Facility “not cause or contribute to the exceedance of an applicable water quality standard.”
21 Effluent Limitation B(3) of the Industrial Permit requires that Best Management Practices (“BMPs”) be
22 developed and implemented to achieve Best Available Technology (“BAT”) and the Best Conventional
23 Pollutant Control Technology (“BCT”). Riley is required to develop and implement BMPs necessary to
24 comply with the Industrial Permit’s requirement to achieve compliance with BAT/BCT standards and
25 with Water Quality Standards.¹

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27 _____
28 ¹ Water Quality Standards means water quality criteria contained in the Regional Water Quality Control Plan, San Diego
Region (“Basin Plan”), the California Ocean Plan, the National Toxics Rule, the California Toxics Rule, and other state or
federally approved surface water quality plans.

1 **II. COMMITMENTS OF THE PARTIES**

2 **A. Industrial Storm Water Pollution Control Measures**

3 6. Within one-hundred (100) days of the execution of this Consent Decree, Riley agrees to
4 complete construction of the following BMPs.

5 (a) Areas that are unpaved or subject to erosion will be paved with concrete.

6 (b) A perimeter berm of 6 to 12 inches in height will be installed to retain the storm
7 water onsite and direct storm water flows to treatment BMPs.

8 (c) The western side of the facility will be bermed with waterproof "K" rail 2-3 feet
9 height to contain material and a 6-inch berm to contain water.

10 (d) The storage area adjacent and to the south of the office will be covered.

11 (e) The storage area in item (d) will be bermed to keep storm water from flowing into
12 the area.

13 (f) An interior berm will be installed running the entire length of the facility from the
14 eastern edge of the clarifier to the alley perimeter wall, creating two separate drainage areas.

15 (g) Truck loading will be accomplished with the excavator bucket extending over the
16 berm to load large trucks with material for removal from the site.

17 (h) Incidental spills will be cleaned up immediately.

18 (i) Off-loading trucks will remain on the eastern side of the berm.

19 (j) Storm water in the eastern portion of the site will be directed to a drainage trough
20 located at the Commercial Street gate, which will contain oleophilic materials for oil and grease
21 removal.

22 (k) Water discharged from the Commercial Street gate will be sampled and noted as
23 the discharge point.

24 (l) Storm water in the western portion of the site will be directed to a two-stage
25 clarifier with 1,400 gallons of capacity.

26 (m) Water in the two-stage clarifier will be retained onsite pending removal by a
27 water treatment service provider.

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(n) An additional 1,500 gallon storage tank will be installed to collect overflow storm water from the two stage clarifier through the use of a float switch operated sump pump. Water in the overflow storage tank will be retained onsite pending removal by a water treatment service provider

7. Within thirty (30) days of the BMPs required pursuant to Paragraph 6, CERF will perform a site visit of the Riley Facility Pursuant to Paragraph 10. If CERF does not accept the final BMPs, the Parties will resolve the dispute via the Dispute Resolution process outlined herein in Paragraphs 18 through 22.

B. STORM WATER POLLUTION PREVENTION PLANS

8. SWPPP Revisions. Within thirty (30) days of execution of this Consent Decree, Riley agrees to revise the SWPPP currently in effect at the Riley Facility to incorporate all storm water pollution prevention measures and other applicable requirements set forth (i) in this Consent Decree and (ii) the 2014 Industrial Permit (NPDES No. CAS000001 as amended April 1, 2014). Specifically, the SWPPP shall include a description of all industrial activities and corresponding potential pollution sources and, for each potential pollutant source, a description of the potential pollutants from the sources. The SWPPP shall also identify BMPs (and their implementation dates) designed to achieve compliance with the provisions of this Consent Decree, as well as their estimated effectiveness. Riley shall revise the SWPPP as necessary to incorporate additional BMPs developed pursuant to this Consent Decree.

9. CERF's Review of Revised SWPPPs. Riley shall submit one electronic copy of the revised SWPPP to CERF upon completion of the revisions specified in Paragraph 8 concurrent with Riley's filing of a new NOI and SWPPP on SMARTS no later than July 1, 2015.

a. Within twenty (20) days of CERF's receipt of the revised SWPPP, CERF shall provide Riley with comments and suggestions, if any, concerning the revisions to the SWPPP.

b. Within ten (10) days of Riley's receipt of CERF's comments on the revised SWPPP, Riley shall incorporate CERF's comments and submit the revised SWPPP to CERF and amend its filing on SMARTS.

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1 c. If CERF is dissatisfied with the SWPPP after its re-issuance pursuant to paragraph
2 9(b) above, CERF may, within sixty (60) days of CERF's receipt of the SWPPP, elect to invoke the
3 dispute resolution procedures outlined in Paragraphs 18 through 22 below.

4 d. Within sixty (60) days of CERF's approval of the revised SWPPP and M&RP,
5 Riley shall commence implementation of the revised SWPPPs and M&RPs if it has not already done so.

6 **C. MONITORING AND REPORTING**

7 10. Site Inspections. During the life of this Consent Decree, CERF's Water Quality site
8 inspection consultant, accompanied by CERF's attorney or other representative, may conduct up to two
9 Site Inspections each calendar year at the Riley. The Site Inspections shall occur during normal business
10 hours and CERF shall provide Riley two (2) business days' notice via email to
11 mark@rileyrecycling.com prior to each inspection. During the Site Inspections, CERF and/or its
12 representatives shall be allowed access to the Riley SWPPP and monitoring records and to all non-
13 privileged monitoring reports and data for the Riley Facility. During the Site Inspections, CERF and/or
14 its representatives may collect split samples of storm water discharges at the Riley Facility. A certified
15 California laboratory shall analyze storm water samples collected by CERF. CERF shall make every
16 reasonable effort to ensure that its inspections are scheduled in such a manner as to allow Riley's
17 compliance officer to be present at all inspections.

18 11. Compliance Monitoring and Oversight. Riley agrees to help defray CERF's reasonable
19 costs incurred in conducting Site Inspections and compliance monitoring by reimbursing CERF Five
20 Thousand Dollars (\$5,000) for these costs. Riley agrees to make compliance monitoring and oversight
21 funds payable to "Coastal Environmental Rights Foundation" and deliver the same by certified mail or
22 overnight delivery to Coast Law Group, LLP, Attn: Marco Gonzalez, 1140 S. Coast Highway 101,
23 Encinitas, CA, 92024 upon execution of the Consent Decree.

24 12. Reporting. During the life of this Consent Decree, on a quarterly basis, Riley shall
25 provide CERF with an electronic copy of all compliance and monitoring data, including inspection
26 reports, related to the Riley Facility that have been filed on SMARTS or provided to a local agency or
27 municipality during the previous ninety (90) day period.

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1 **D. ENVIRONMENTAL PROJECTS AND FEES**

2 13. Environmental Mitigation Project. Riley agrees to pay \$10,000 to San Diego
3 Coastkeeper for use in a supplemental environmental project to eliminate or mitigate the impacts of
4 storm water pollution to the San Diego Bay watershed receiving discharges from the Riley Facility.
5 Upon execution of the Consent Decree, Riley shall deliver the mitigation payment, payable to Coast
6 Law Group, LLP, by certified mail or overnight delivery to Coast Law Group, LLP, Attn: Marco
7 Gonzalez, 1140 S. Coast Highway 101, Encinitas, CA, 92024. Within thirty (30) days after the Effective
8 Date, Coast Law Group, LLP shall transfer the mitigation payment to San Diego Coastkeeper, Attn.
9 Megan Baehrens, 2825 Dewey Road, Suite 200, San Diego, CA 92106.

10 14. CERF's Fees and Costs. Riley agrees to pay \$10,000 to Coast Law Group, LLP to
11 reimburse CERF for CERF's investigation fees and costs, expert fees and costs, reasonable attorneys'
12 fees, and other costs incurred as a result of investigating and preparing the lawsuit, and negotiating a
13 resolution of this matter (together "Fees and Costs"). Payment for Fees and Costs shall be made upon
14 execution of the Consent Decree and shall be made payable to "Coast Law Group LLP" and delivered
15 Attn: Marco Gonzalez, 1140 S. Coast Highway 101, Encinitas CA, 92024.

16 **E. STIPULATED PAYMENT**

17 15. Defendants shall make a remediation payment of One Thousand Dollars (\$1,000) for
18 each missed deadline included in this Consent Decree, unless the missed deadline results from a Force
19 Majeure Event. Payments for missed deadlines shall be made to San Diego Coastkeeper for the
20 restoration and/or improvement of the watershed in the area affected by the missed deadline. Defendants
21 agree to make the stipulated payment within thirty (30) days of a missed deadline to San Diego
22 Coastkeeper. Defendants shall provide CERF with a copy of each such payment.

23 **F. COMMITMENTS OF PLAINTIFF**

24 16. Stipulated Dismissal. Within three (3) days of execution of this Consent Decree by the
25 Parties, CERF shall file this Consent Decree with the United States District Court for the Southern
26 District of California ("District Court").

27 17. Review by Federal Agencies. CERF shall submit this Consent Decree to EPA and the
28 U.S. Department of Justice ("DOJ") within three days of the execution of this Consent Decree for

1 review consistent with 40 C.F.R. § 135.5. In the event that EPA or DOJ comments negatively on the
2 provisions of this Consent Decree, the Parties agree to meet and confer to attempt to resolve the issue(s)
3 raised by EPA or DOJ.

4 **G. DISPUTE RESOLUTION**

5 18. This Court shall retain jurisdiction over this matter for the purposes of implementing and
6 enforcing the terms and conditions of this Consent Decree, and adjudicating all disputes among the
7 parties that may arise under the provisions of this Consent Decree. The Court shall have the power to
8 enforce this Consent Decree with all available legal and equitable remedies, including contempt.

9 19. Meet and Confer. A party to this Consent Decree shall invoke the dispute resolution
10 procedures of this Section by notifying all other Parties in writing of the matter(s) in dispute and of the
11 party's intention to resolve the dispute under this Section. The Parties shall then meet and confer in an
12 attempt to resolve the dispute informally over a period of fourteen (14) calendar days from the date of
13 the notice.

14 20. If the Parties cannot resolve a dispute by the end of the meet and confer informal
15 negotiations described in Paragraph 19 above, Riley may invoke formal mediation by sending CERF a
16 registered letter to that effect no more the five (5) business days after the fourteen (14) days. Referenced
17 in Paragraph 19 above. The Parties shall mutually agree on a mediator and a mediation process within
18 fifteen (15) business days of the date of Riley's notice to CERF. Riley shall be responsible for all of the
19 mediator's costs.

20 21. If the Parties cannot resolve a dispute by the end of the mediation process described in
21 Paragraph 20 above, the party invoking the dispute resolution provision shall provide notice to the other
22 party that it intends to invoke formal dispute resolution by filing a motion before the United States
23 District Court for the Southern District of California. The Parties shall jointly apply to the Court for an
24 expedited hearing schedule on the motion.

25 22. If a party initiates a motion or proceeding before the Court relating to enforcement of the
26 terms and conditions of this Consent Decree, the party shall be entitled to recover fees incurred to
27 enforce the terms of this Consent Decree consistent with the provisions of Sections 505 and 309 of the
28 CWA, 33 U.S.C. §1365 and § 1319.

1 **III. RETENTION OF JURISDICTION AND TERMINATION**

2 23. The Court shall retain jurisdiction over this matter for purposes of interpreting, modifying
3 or enforcing the terms of this Consent Decree until the end of the 2015-2016 wet season (May 30, 2016)
4 unless either Party files and is granted a timely motion requesting an extension of time for the Court to
5 retain jurisdiction.

6 24. Unless such motion is granted this Consent Decree shall terminate on May 30, 2016.

7 **IV. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

8 25. In consideration of the above, upon termination of this Consent Decree, the Parties
9 hereby fully release, except for claims for Defendants' failure to comply with this Consent Decree and
10 as expressly provided below, each other and their respective successors, assigns, officers, agents,
11 employees, landlords/property owners, and all persons, firms and corporations having an interest in
12 them, from any and all alleged CWA violations claimed in the Complaint, up to and including the
13 Effective Date of this Consent Decree.

14 26. Nothing in this Consent Decree limits or otherwise affects Plaintiff's right to address or
15 take any position that it deems necessary or appropriate in any formal or informal proceeding before the
16 Regional Board, EPA, or any other judicial or administrative body on any other matter relating to Riley.

17 **V. MISCELLANEOUS PROVISIONS**

18 27. The Parties enter into this Consent Decree to avoid prolonged and costly litigation.
19 Neither the Consent Decree, nor any payment pursuant to the Consent Decree, nor any implementation
20 of BMPs or any other compliance with this Consent Decree, shall constitute or be construed as – and
21 Defendants expressly do not intend to imply—any admission to any finding, adjudication, or
22 acknowledgment of any fact, law, or liability, nor shall it be construed as an admission of violation of
23 any law, rule, or regulation. Defendants maintain and reserve all defenses they may have to any alleged
24 violations that may be raised in the future.

25 28. Sweeney Defendants' obligations under the provisions of this Consent Decree shall be
26 limited to using best commercial efforts to ensure Riley's full compliance with the terms of the Consent
27 Decree. In the event that Riley abandons the Property during the life of the Consent Decree without first
28 obtaining a confirmation of an accepted Notice of Termination from the Regional Water Quality Control

1 Board, Sweeney Defendants shall be responsible for closing the site and obtaining a confirmation of an
2 accepted Notice of Terminations from the Regional Water Quality Control Board.

3 29. Force Majeure. Force Majeure includes any act of God, war, fire, earthquake, windstorm,
4 flood or natural catastrophe; unexpected and unintended accidents not caused by Defendants' or their
5 employees' negligence; civil disturbance, vandalism, sabotage or terrorism; restraint by court order or
6 public authority or agency; or action or non-action by, or inability to obtain the necessary authorizations
7 or approvals from any governmental agency. Force Majeure shall not include normal inclement weather,
8 economic hardship or inability to pay. Any party seeking to rely upon this paragraph to excuse or
9 postpone performance, shall have the burden of establishing that it could not reasonably have been
10 expected to avoid the event or circumstance, and which by exercise of due diligence has been unable to
11 overcome the failure of performance. Defendants shall exercise due diligence to resolve and remove any
12 force majeure event.

13 30. Construction. The language in all parts of this Consent Decree shall be construed
14 according to its plain and ordinary meaning, except as to those terms defined in the Industrial Permit, the
15 Clean Water Act, or specifically herein.

16 31. Choice of Law. The laws of the United States shall govern this Consent Decree.

17 32. Severability. In the event that any provision, paragraph, section, or sentence of this
18 Consent Decree is held by a court to be unenforceable, the validity of the enforceable provisions shall
19 not be adversely affected.

20 33. Correspondence. All notices required herein or any other correspondence pertaining to
21 this Consent Decree shall be sent by regular, certified, or overnight mail as follows:

22 If to Plaintiff:

23 Marco Gonzalez
24 Coast Law Group LLP
25 1140 South Coast Highway 101
26 Encinitas, CA 92024

27 With copies to:

28 Coastal Environmental Rights Foundation
1140 South Coast Highway 101
Encinitas, CA 92024

1 If to Riley Recycling, Inc:

2 Mark Riley
3 2812 Commercial Street
4 San Diego, CA 92113

5 If to Sweeney Defendants:

6 S. Wayne Rosenbaum
7 Opper & Varco LLP
8 225 Broadway, Suite 1900
9 San Diego, CA 92101

10 With copies to:

11 Paul H. Sweeney
12 2471 Calle de Pescadores
13 Alpine, CA 91901

14 Notifications of communications shall be deemed submitted three days after the date that they
15 are postmarked and sent by first-class mail or deposited with an overnight mail/delivery service. Any
16 change of address or addresses shall be communicated in the manner described above for giving notices.
17 In addition, the Parties may agree to transmit documents electronically or by facsimile.

18 34. Effect of Consent Decree. Plaintiff does not, by its consent to this Consent Decree,
19 warrant or aver in any manner that Defendants' compliance with this Consent Decree will constitute or
20 result in compliance with any federal or state law or regulation. Nothing in this Consent Decree shall be
21 construed to affect or limit in any way the obligation of Defendants to comply with all federal, state, and
22 local laws and regulations governing any activity required by this Consent Decree.

23 35. Counterparts. This Consent Decree may be executed in any number of counterparts, all of
24 which together shall constitute one original document. Telecopy and/or facsimile copies of original
25 signature shall be deemed to be originally executed counterparts of this Consent Decree.

26 36. Modification of the Consent Decree. This Consent Decree, and any provisions herein,
27 may not be changed, waived, discharged, or terminated unless by a written instrument, signed by the
28 Parties.

29 37. Full Settlement. This Consent Decree constitutes a full and final settlement of this matter.

30 38. Integration Clause. This is an integrated Consent Decree. This Consent Decree is
31 intended to be a full and complete statement of the terms of the agreement between the parties and

expressly supersedes any and all prior oral or written agreements covenants, representations, and warranties (express or implied) concerning the subject matter of this Consent Decree.

39. Authority. The undersigned representatives for CERF and Defendant Riley Recycling, Inc. each certify that it is fully authorized by the party whom he/she represents to enter into the terms and conditions of this Consent Decree and that this Consent Decree binds that party.

40. The provisions of this Consent Decree apply to and bind the Parties, including any successors or assigns. The Parties certify that their undersigned representatives are fully authorized to enter into this Consent Decree, to execute it on behalf of the Parties, and to legally bind the Parties to its terms.

41. The Parties agree to be bound by this Consent Decree and not to contest its validity in any subsequent proceeding to implement or enforce its terms. By entering into this Consent Decree, Riley does not admit liability for any purpose as to any allegation or matter arising out of this Action.

42. The term "Effective Date," as used in this Consent Decree, shall mean the date on which the Court enters this Consent Decree.

IN WITNESS WHEREOF, the undersigned have executed this Consent Decree as of the date first set forth above.

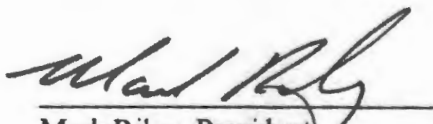
COASTAL ENVIRONMENTAL
RIGHTS FOUNDATION

Dated: 6/26, 2015


Sara Kent, Programs Director

RILEY RECYCLING, INC

Dated: 6/24, 2015


Mark Riley, President

1 Dated:

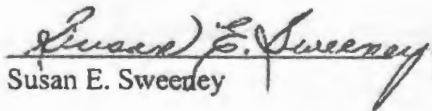
June 18, 2015



Paul H. Sweeney

6 Dated:

June 18, 2015



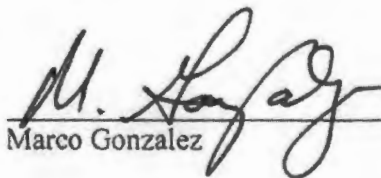
Susan E. Sweeney

11 APPROVED AS TO FORM

14 Dated:

6/25, 2015

COAST LAW GROUP LLP

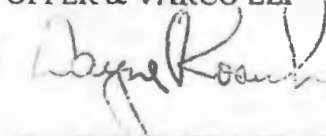


Marco Gonzalez

19 Dated:

June 18, 2015

OPPER & VARCO LLP



S. Wayne Rosenbaum